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State of Ohio Environmental Protection Agency

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June 24, 2010

OHD 077 786 309

Mr. B. Geoffrey Jones
Vice President of Remediation and Discontinued Operations
Clean Harbors Environmental Services, Inc.
400 Arbor Lake Drive, Suite B-900
Columbia, SC 29223

RE: Clean Harbors Environmental Services, Inc.
- **GSX Disposal, LLC: Bessemer Avenue, Cleveland, OH - OHD980569438;**
- **GSX Disposal, LLC: Train Avenue, Cleveland, OH - OHD077786309;**
Financial Assurance Records Review

Dear Mr. Jones:

On June 24, 2010, I completed evaluating the above listed Clean Harbors/GSX facilities' compliance with hazardous waste financial assurance requirements contained in Ohio Administrative Code (OAC) rules 3745-54-101 and 3745-55-42 through 3745-55-47. GSX Disposal, LLC operates as a subsidiary of Clean Harbors Disposal Services, Inc. Following is a summary of my evaluation.

Closure and Post-Closure Cost Estimates:

Train Avenue Facility:

Clean Harbors is closing a former hazardous waste storage area(s) at the Train Avenue facility. A current closure cost estimate was submitted in Attachment A to your June 17, 2010, email to me. The current closure cost is estimated to be \$179,000.00. You indicated in the email that the cost estimate was updated based on discussions to date and pending submission of a new Closure Plan after Clean Harbors receives Ohio EPA's response to the company's latest proposal. Though not stated specifically in your submittal it appears the revised cost estimate is based on current dollars. *~ Inflation factor is not included.*

The last closure cost estimate (\$162,000.00) for the Train Avenue facility was submitted to Ohio EPA in your letter dated January 23, 2008. Clean Harbors failed to submit a current closure cost estimate, prepared in accordance with OAC rules 3745-55-42(A) and (B), for 2009, in violation of OAC rule 3745-55-42(E). Clean Harbors needs to maintain a detailed, written closure cost estimate, in current dollars, of the cost of closing the facility. Any decrease to the financial assurance mechanism must be preapproved in writing by Ohio EPA.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Bessemer Avenue Facility:

Clean Harbors is currently conducting post-closure of a hazardous waste landfill at the Bessemer Avenue facility. Pursuant to OAC rule 3745-55-44(E) the owner/operator needs to submit annually to Ohio EPA the current, detailed post-closure cost estimate. My records indicate the most recent post-closure cost estimate for this facility was submitted to Ohio EPA in your letter dated November 7, 2007.

Clean Harbors has failed to submit a current post-closure cost estimate, prepared in accordance with OAC rules 3745-55-44(A) and (B) since 2008, in violation of OAC rule 3745-55-44(E). Clean Harbors must submit a copy of the current post-closure cost estimate for the Bessemer Avenue facility to Ohio EPA. The inflation factors for 2008, 2009 and 2010 were 2.66, 2.1 and 1.18, respectively, although given the length of time you should recalculate the cost estimate in current dollars. *No cost estimate in this submission.*

One significant item missing from both facility cost estimates is cost contingencies. As you know, cost contingencies are standard to engineering projects and are amounts/percentages added to the cost estimate allowing for unknown and/or unplanned for events. Clean Harbors needs to add a cost contingency to its cost estimates. Our experience with other facilities is that closure and post-closure cost contingencies are often quoted in the 15% to 20% ranges based on project specifics.

Financial Assurance Mechanism:

Clean Harbors uses Insurance for closure and post-closure financial assurance for both the Train Avenue and Bessemer Avenue facilities pursuant to OAC rules 3745-55-43(E) and 3745-55-45(E); respectively. You sent me a copy of the *Ohio Certificate of Insurance for Closure or Post Closure Care* (Financial Assurance Certificate) via the June 17, 2010, email. The Certificate/Policy was issued through Steadfast Insurance Company, Policy No. ENC 5254597-02, for a face amount of \$3,047,799.56. Endorsement #7 of the insurance policy indicates \$858,077.21 is carried for the Train Avenue facility and \$2,189,792.35 is carried for the Bessemer Avenue facility. Effective dates listed on the Financial Assurance Certificate are September 6, 2006 through September 6, 2013.

You've stated the current closure cost estimate for the Train Avenue facility is \$179,000.00, which is significantly less than the \$858,007.21 insurance that Clean Harbors is currently carrying for the facility. I assume from your email message that this higher figure is either outdated or also covers other things. You said in your June 17 email that Clean Harbors thought it best to make the change to the cost estimate/funding when the final Closure Plan is approved by Ohio EPA. In that the Train Avenue facility coverage appears to be overfunded, it is adequate. Without a current cost estimate for Bessemer Avenue, however, I could not evaluate the adequacy of the \$2,189,792.35. *Harbors is keeping the insurance amount until OSPA approves the closure plan?*

Also, the wording of the Financial Assurance Certificate is not identical to the wording specified in paragraph (E) of OAC rule 3745-55-51. The first sentence of the last paragraph on the first page should be (the missing words are underlined): "The Insurer hereby certifies that ... to provide financial assurance for closure and post-closure care for the facility(ies) identified above." Clean Harbors must submit a revised Certificate of Insurance with the correct wording. *is it still the case that clean Harbors is keeping the insurance amount until OSPA approves the closure plan? the wording is still wrong.*

Liability Coverage:

Clean Harbors uses Insurance to provide coverage for both sudden and non-sudden accidental occurrences for the Train Avenue facility pursuant to OAC rules 3745-55-47(A) and (B). Liability coverage is not required for the Bessemer Avenue facility. The most recent *Hazardous Waste Facility Certificate of Insurance* for liability coverage (Liability Certificate) was submitted to Ohio EPA on January 23, 2008. Coverage amounts are \$4,000,000.00 per occurrence and \$8,000,000.00 annual aggregate. The Liability Certificate listed effective dates from May 1, 2007, through May 1, 2008. The Liability Certificate (Policy number: PLC 3743936-07) attached to your letter dated January 23, 2008, appears to be in compliance with OAC rules 3745-55-47(A)(B) except that only the effective date need be listed, not an effective period. I realize this issue has been discussed between our offices in the past but OAC rule 3745-55-51(J) simply requires the effective date of the policy. For your next submittal please revise the title of this document to Hazardous Waste Facility Certificate of Liability Insurance pursuant to OAC rule 3745-55-51(J) and list just the policy's effective date.

*No Liability Certificate of
Liability Insurance is not in this
submittal
attached*

As part of this review we contacted the broker for the above noted insurance policies and confirmed they remain in effect.

Corrective Action:

It is my understanding that Clean Harbors is not required to provide financial assurance to the State of Ohio for either the Train Avenue facility or the Bessemer Avenue facility for RCRA Corrective Action pursuant to OAC rule 3745-54-101 at this time.

If you have any questions or need further clarification of any matter mentioned in this letter, please feel free to contact me at (614) 728-8961 or julia.zhang@epa.state.oh.us.

Sincerely,



Julia Zhang
Compliance Assurance Section
Division of Hazardous Waste Management

ec: Shannon Ryan, NEDO, DHWM
Tom Roth, NEDO, DHWM
John Palmer, NEDO, DHWM

NOTICE:

Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with applicable regulations.